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Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, a non-governmental organization in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Democratic Space, Civil Society and Political Crisis in Burundi*

The democratic space in Burundi has continuously shrunk since 2013 and the political crisis has continued to worsen. Since Burundian President Pierre Nkurunziza in 2015 took a third term in office Burundi fell into political and civil turmoil that escalated to serious human rights abuses and violations. To date and as illustrated in the Report of the Office of the High Commissioner for Human Rights to the Third Cycle of the Universal Periodic Review for Burundi, there have been enforced disappearances, extra-judicial killings, as well as, numerous serious human rights abuses including violations by ruling party's youth league, Imbonerakure, such as sexual violence.

In addition, the current government of Burundi has left several critical international bodies such as the Rome Statute of the International Criminal Court and has weakened its cooperation with the Human Rights Council in so far as denying the Commission of Inquiry on Human Rights in Burundi access into the country.

The current government has also taken several legal and non-legal steps to silence any opposition especially by the media. This statement condemns such actions by the very authorities that are supposed to protect a democratic and civil society to freely express their opinions in a non-violent manner. Moreover, similar legal and non-legal measures were taken to prevent civilians' right to freedom of assembly and association. These actions have led to escalated violence including detentions, and even reports of enforced disappearances and torture particularly towards journalists.

Democratic Space and Political Crisis

The state of Burundi, like any other state, has an obligation to respect, protect, and fulfil all human rights, which includes the freedom of information, freedom of association and expression, and freedom of assembly. However, in June 2013 the government of Burundi passed a law that prohibited journalists from publishing stories that undermined the government. The law bans the publication of stories about "national defence, public safety, state security, and the local currency" thus limiting the right to freedom of information in Burundi.1

This was an unconstitutional and unlawful move among many others that the government of Burundi has enacted in order to keep the current President, Pierre Nkurunziza, in power by serving a third term as president of Burundi. After decades of a deadly civil war that dates back to 1993, which devastated the country leaving millions of Burundians dead and many more displaced across the globe a peace agreement was established under the "Arusha Peace and Reconciliation Agreement for Burundi" signed on 28 August 2000 that was mediated by the late President Julius Nyerere and President Nelson Mandela. The Arusha Peace Agreement served as a fundamental corner stone for the conception of the Burundi Constitution. Both the Arusha Agreement and the Constitution of Burundi stipulate that an elected president will serve a term of five years renewable for a maximum of a second term.

The Arusha Peace Agreement states that:

"She/he [i.e., the president] shall be elected for a term of five years, renewable only once. No one may serve more than two presidential terms."

Burundi's Constitution of 2005, Article 96, states:

"The President of the Republic is elected by universal direct suffrage for a term of five years renewable one time."

1 https://www.reuters.com/article/burundi-rights/burundi-enacts-media-law-that-reporters-say-curbs-press-freedoms-idUSL5N0EG3FZ20130604

Despite these clear provisions President Nkurunziza announced in 2015 that he would seek another term, which would effectively be his third presidential term. As expected civil society challenged the general elections upon this claim but were systematically shut down. As mentioned above the government of Burundi began silencing civil society and taking away Burundians freedom of information, freedom of association and expression, and freedom of assembly since 2013. These inalienable rights are essential freedoms for civilians to exercise in order to be active participants in civil, social, and political life. Further, the new law gave the administration the power to ban peaceful assembly on ambiguous information. This is a clear demonstration of the failure of good governance and in direct violation of the Arusha Peace Agreement and the Burundi Constitution of 2005.

In October 2013 the Council of Ministers of Burundi adopted a bill containing a number of amendments to the Constitution, one of which was to increase a president's possible term from two to four presidential terms per individual.

The proposed amendment itself goes against the Arusha Peace Agreement and the Constitution of Burundi as it states that:

"No procedure of revision may be retained if it infringes the national unity, the cohesion of the Burundian People, the secularity of the State, the reconciliation, the democracy or the integrity of the territory of the Republic."

Thus, this act alone puts the Arusha Peace Agreement in jeopardy and is counterproductive to the efforts and commitments made by the people and leaders and as many warned would regress or disrupt the progress made since 2000 when the Arusha Peace Agreement was signed. Moreover, due to the response of civil society it is clear that the proposed amendment infringed on the cohesion of democracy, the integrity of the territory of the Republic, and the peace of Burundian people.

After the amendment was rejected President Nkurunziza insisted that his first term "resulted from universal indirect suffrage (legislature) rather than universal direct suffrage (popular vote) and therefore should not be counted"2. However, on May 4th, 2015 the Constitutional Court ruled that the president seeking a third term is constitutional but after deliberating and analysing the Court's reasoning, it would appear that the decision was controversial as it contained fundamental contradictions.

Before and during the debates regarding a third term for President Nkurunziza civil society space in Burundi had already began to shrink. For instance, in 2013, new restrictive laws on the press, assemblies, and public demonstrations were introduced. One of the provisions regarding the press was that journalists had to reveal their sources of information. Moreover, groups wanting to hold meetings and organize demonstrations concerning political developments and state accountability on human rights were arbitrarily denied authorisation. It was reported that the Office of the High Commissioner for Human Rights (OHCHR) had documented over forty cases where the rights for peaceful association and assembly were denied between January and September 20143, as well as, in 2015 arrests and prohibitions towards gathering in public to demonstrate against the government.

Freedom of association, assembly, expression and opinion is guaranteed under Article 31 and Article 32 of the Constitution of the Republic of Burundi stating:

"Freedom of assembly and association shall be guaranteed, as well as the right to form non-profit associations or organizations in conformity with the law."

Furthermore, the constitution incorporates Article 19 and the International Covenant on Civil and Political Rights (ICCPR) both of which guarantee the right to peaceful assembly in the Republic of Burundi.

2 http://www.icnl.org/research/journal/vol19iss1/Vital%20Nshimirimana%20and%20Audace%20Gatavu.pdf
3 Ibid.

Despite these provisions to ensure the promotion and protection of freedom of expression and the right to peacefully assemble the government of Burundi has enacted legal constraints, threats, violence and arbitrary arrests towards journalists, disappearances, detentions, suspension of permits4, banning of websites and the shutting down of radio stations and the internet including social media5, and even burning down newspaper offices, cutting down radio signals, and destroying facilities. These are clear attempts to silence the voices of those in opposition or any criticism towards the current government of Burundi. As a result, many citizens have turned to alternative media outlets, specifically, social media, for news and information, which, can sometimes include propaganda, misinformation, or unverified sources. As well, the ban on protests and on citizens to freely assemble has provoked a series of unrests in the country and has also contributed to clashes between police forces and demonstrators even in the presence of children6.

Recommendations:

The UN Human Rights Council should:

- *Assist* and *support* in any capacity the peaceful Civil Society Organisations that have held campaigns in support and protection of the Constitution of Burundi (2005) and the Arusha Peace Agreement (2000), opposing the government of President Pierre Nkurunziza for changing the constitution and seeking an un-constitutional third term.
- *Encourage* the international community to provide safe refuge for media workers under severe threat in Burundi.

The government of Burundi should:

- *Promote, protect, and ensure* people's freedom of expression and freedom of peaceful assembly in Burundi.
- *Release* all detained journalists and *permit* the Burundian Union of Journalists to freely operate.
- *Respect* and *adhere* closely to the Arusha Peace Agreement.
- *Rebuild* communication and cooperation with the Office of the High Commissioner for Human Rights (OHCHR).

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

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4 https://cpj.org/africa/burundi/

5 http://www.bbc.com/news/world-africa-32512668

6 http://www.icnl.org/research/journal/vol19iss1/Vital%20Nshimirimana%20and%20Audace%20Gatavu.pdf